

FRANCIS ALEXANDER, LLC

Francis Malofiy, Esquire

Attorney ID No.: 208494

1125 Walnut Street

Philadelphia, PA 19107

T: (215) 500-1000

F: (215) 500-1005

Law Firm / Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

DANIEL V. MARINO

Plaintiff

VS.

USHER (a/k/a Usher Terry Raymond IV); *ETAL*

Defendants

NO.: 11-cv-6811

JURY TRIAL DEMANDED

**PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT BY
DEFENDANTS DANTE E. BARTON, and DESTRO MUSIC
PRODUCTIONS, INC.**

Pursuant to Federal Rule of Civil Procedure 55(a), Plaintiff hereby request the Clerk enter Default by defendants Dante E. Barton ("Barton"), and Destro Music Productions, Inc. ("Destro Music") and in support thereof states the following:

On November 17, 2011, Plaintiff filed an Amended Complaint against Defendants.

The Summons and Amended Complaint was served upon defendant Barton on January 4th, 2012 via personal service on the individual at: 111 Bergan Road; Oreland, PA 19075. See attached Proof of Service for Barton marked as Exhibit "A".

The Summons and Amended Complaint was served upon defendant Destro Music on January 4th, 2012 via serving Barton, the Person in Charge, who is designated by law to accept service of process on behalf of Destro Music at: 111 Bergan Road; Oreland, PA 19075. See attached Proof of Service for Destro Music marked as Exhibit "B".

As the Docket clearly reflects, and as the Clerk and the Court can plainly see, a responsive pleading has not been filed or served by defendants Barton and Destro Music within (21) days of such service pursuant to Rule 12(a)(1)(A)(i). Such responsive pleading was due on or before January 25, 2012. Defendants Barton and Destro Music have failed to file a responsive pleading or otherwise defend the suit which is now seven (7) days past due. See attached Docket as of February 1st, 2012 marked as Exhibit "C".

Entry of Default is appropriate and thus requested against defendants Dante E. Barton, and Destro Music Productions, Inc.

Respectfully submitted,
FRANCIS ALEXANDER, LLC

s/ Francis Malofiy

Francis Malofiy, Esquire
Attorney ID No.: 208494
1125 Walnut Street
Philadelphia, PA 19107
T: (215) 500-1000
F: (215) 500-1005

Law Firm / Attorney for Plaintiff

February 1st, 2012

DATED

CERTIFICATE OF SERVICE

I, Francis Malofiy, Esquire of the Law Firm Francis Alexander, LLC hereby certify that a true and correct copy of the foregoing Plaintiff's Request for Entry of Default was filed with the Court of record via the ECF System and served upon the parties to this lawsuit or their counsel as addressed below:

DEFENDANTS

Dante E. Barton
111 Bergan Road
Oreland, PA 19075

"Barton"

Destro Music Productions, Inc.
111 Bergan Road
Oreland, PA 19075

"Destro Music"

Tommy Van Dell
2621 Mandeville Canyon Road
Los Angeles, CA 90049

"Van Dell"

IN2N Entertainment Group, LLC
2621 Mandeville Canyon Road
Los Angeles, CA 90049

"IN2N Entertainment"

William C. Guice

"Guice"

On information and belief, defendant William C. Guice ("Guice") is an individual who either resides in Camden County, New Jersey and is believed to be either a citizen of state of New Jersey; address as follows: 1 Elena Court, Voorhees, NJ 08043; or resides in Ohio and is believed to be a citizen of the state of Ohio.

FOX ROTHSCHILD LLP
Matthew Olesh
2000 Market Street, 20th Floor
Philadelphia, PA 19103
(215) 299-2000

REPRESENTING THE FOLLOWING DEFENDANTS:

Bobby Ross Avila, Jr.

"B. Avila"

Issiah Avila, Jr.

"I. Avila"

James Samuel "Jimmy Jam" Harris III

"Harris"

Terry Steven Lewis

"Lewis"

Defenders of Music

"Defenders of Music"

EMI Music Publishing, Inc.

"EMI"

<i>EMI April Music, Inc. & EMI Blackwood Music, Inc.</i>	<i>"EMI Parties"</i>
<i>Flyte Tyme Tunes</i>	<i>"Flyte Tyme"</i>
<i>Sublime Basement Tunez</i>	<i>"Sublime Basement"</i>
<i>UR-IV Music, Inc.</i>	<i>"UR-IV"</i>
<i>Warner-Tamerlane Publishing Corp.</i>	<i>"Warner-Tamerlane"</i>
<i>Bystorm Entertainment</i>	<i>"Bystorm"</i>
<i>Mark Pitts</i>	<i>"Pitts"</i>
<i>Sony Music Holdings, Inc.</i>	<i>"Sony"</i>

FRANCIS ALEXANDER, LLC

s/ Francis Malofiy

Francis Malofiy, Esquire
Attorney ID No.: 208494
1125 Walnut Street
Philadelphia, PA 19107
T: (215) 500-1000
F: (215) 500-1005

Law Firm / Attorney for Plaintiff

February 1st, 2012

DATED

EXHIBIT “A”

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

DANIEL P. MARINO

Plaintiff

v.

Civil Action No. 11-6811

USHER (A/K/A USHER TERRY RAYMOND IV)

SONY MUSIC HOLDINGS, INC.

EMI MUSIC PUBLISHING, INC.

JAMES SAMUEL HARRIS, III

TERRY STEVEN LEWIS

BOBBY ROSS AVILA, JR

ISSIAH AVILA, JR

WILLIAM C GUICE

DANTE E BARTON

DESTRO MUSIC PRODUCTIONS, INC.

DEFENDERS OF MUSIC

FLYTE TYME TUNES

SUBLIME BASEMENT TUNEZ

UR-IV MUSIC, INC.

WARNER-TAMERLINE PUBLISHING CORP.

MARK PITTS

BYSTROM ENTERTAINMENT

TOMMY VAN DELL

IN2N ENTERTAINMENT GROUP, LLC.

Defendant

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

DANTE BARTON - 1111 BERGAN RD. ORELAND, PA 19075

835 PLEASANT RD. LANS'DOWNE, PA 19050

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

FRANCIS MALOFIY
THE BEASLEY BUILDING
1125 WALNUT STREET
PHILADELPHIA, PA. 19107


53576

~~53303~~

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: Nov 17, 2011

CLERK OF COURT


 Robert D. Fehrle, Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 11-6811

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Dante E. Barton
 was received by me on *(date)* 1 / 4 / 12

☒ I personally served the summons on the individual at *(place)* 1111 Bergan Rd.,
Oreland, PA 19075 on *(date)* 1 / 4 / 12 ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

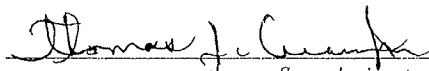
☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: 1/4/12



Server's signature

Thomas Crean, Jr., Process Server

Printed name and title

Dennis Richman's Services

1500 JFK Blvd., ste. 1706, Phila. PA 19102

Server's address

Additional information regarding attempted service, etc:

EXHIBIT “B”

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of Pennsylvania

DANIEL P. MARINO

Plaintiff

v.

Civil Action No. 11-6811

USHER (A/K/A USHER TERRY RAYMOND IV)

SONY MUSIC HOLDINGS, INC.

EMI MUSIC PUBLISHING, INC.

JAMES SAMUEL HARRIS, III

TERRY STEVEN LEWIS

BOBBY ROSS AVILA, JR

ISSIAH AVILA, JR

WILLIAM C GUICE

DANTE E BARTON

DESTRO MUSIC PRODUCTIONS, INC.

DEFENDERS OF MUSIC

FLYTE TYME TUNES

SUBLIME BASEMENT TUNEZ

UR-IV MUSIC, INC.

WARNER-TAMERLINE PUBLISHING CORP.

MARK PITTS

BYSTROM ENTERTAINMENT

TOMMY VAN DELL

IN2N ENTERTAINMENT GROUP, LLC.

Defendant

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Destro Music Productions, Inc. - 1111 Bergan Rd., Oreland, PA 19075

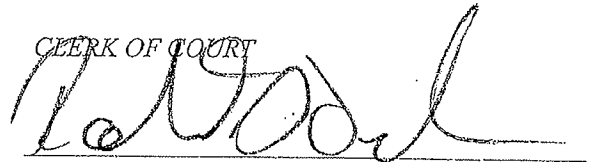
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

FRANCIS MALOFIY
THE BEASLEY BUILDING
1125 WALNUT STREET
PHILADELPHIA, PA. 19107

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: Nov 17, 2011

CLERK OF COURT

 Robert D. Fehrle, Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 11-6811

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Destro Music Productions, Inc.
 was received by me on *(date)* 01/03/12.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on *(name of individual)* Dante E. Barton, Person in Charge, who is
 designated by law to accept service of process on behalf of *(name of organization)* Destro Music Productions,
Inc. at 1111 Bergan Rd., Oreland, PA on *(date)* 01/04/12 @ 3:45 p.m.

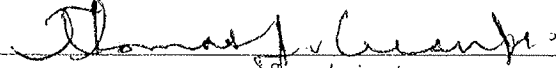
☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: 01/04/12



Server's signature

Thomas J. Crean, Jr., Process Server
Printed name and title

Dennis Richman's Services, Inc.
1500 JFK Blvd., Suite 1706
Philadelphia, PA 19102
Server's address

Additional information regarding attempted service, etc:

EXHIBIT “C”

SPECIAL

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CIVIL DOCKET FOR CASE #: 2:11-cv-06811-PD**

MARINO v. USHER
Assigned to: HONORABLE PAUL S. DIAMOND
Cause: 17:101 Copyright Infringement

Date Filed: 10/28/2011
Jury Demand: Plaintiff
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

Plaintiff

DANIEL V. MARINO

represented by **FRANCIS MALOFIY**
THE BEASLEY BLDG
1125 WALNUT ST
PHILADELPHIA, PA 19107
215-500-1000
Email:
FRANCIS.MALOFIY@BEASLEYFIRM.COM

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

V.

Defendant

USHER

ETAL

TERMINATED: 11/17/2011

Defendant

**SONY MUSIC HOLDINGS,
INC.**

Defendant

**EMI MUSIC PUBLISHING,
INC.**

Defendant

JAMES SAMUEL HARRIS, III

Defendant

TERRY STEVEN LEWIS

Defendant

BOBBY ROSS AVILA, JR

Defendant

ISSIAH AVILA, JR

Defendant

WILLIAM C GUICE

Defendant

DANTE E BARTON

Defendant

**DESTRO MUSIC
PRODUCTIONS, INC.**

Defendant

DEFENDERS OF MUSIC

Defendant

FLYTE TYME TUNES

Defendant

SUBLIME BASEMENT TUNEZ

Defendant

UR-IV MUSIC, INC.

Defendant

**WARNER-TAMERLINE
PUBLISHING CORP.**

Defendant

MARK PITTS

Defendant

BYSTROM ENTERTAINMENT

Defendant

TOMMY VAN DELL

Defendant

**IN2N ENTERTAINMENT
GROUP, LLC.**

Defendant

USHER
A/K/A USHER TERRY RAYMOND
IV

Date Filed	#	Docket Text

10/28/2011	<u>1</u>	COMPLAINT against USHER (Filing fee \$ 350 receipt number 052355.), filed by DANIEL V. MARINO. (Attachments: # <u>1</u> Civil Cover Sheet)(mima,) (Entered: 11/01/2011)
10/28/2011		Summons Issued as to USHER. One Forwarded To: Counsel on November 1, 2011 (mima,) (Entered: 11/01/2011)
10/28/2011		DEMAND for Trial by Jury by DANIEL V. MARINO. (mima,) (Entered: 11/01/2011)
11/17/2011	<u>2</u>	AMENDED COMPLAINT against USHER, SONY MUSIC HOLDINGS, INC., EMI MUSIC PUBLISHING, INC., JAMES SAMUEL HARRIS, III, TERRY STEVEN LEWIS, BOBBY ROSS AVILA, JR, ISSIAH AVILA, JR, WILLIAM C GUICE, DANTE E BARTON, DESTRO MUSIC PRODUCTIONS, INC., DEFENDERS OF MUSIC, FLYTE TYME TUNES, SUBLIME BASEMENT TUNEZ, UR-IV MUSIC, INC., WARNER-TAMERLINE PUBLISHING CORP., MARK PITTS, BYSTROM ENTERTAINMENT, TOMMY VAN DELL, IN2N ENTERTAINMENT GROUP, LLC. EXHIBITS, AUDIO EXHIBITS FILED IN HARD COPY, VERIFICATION, filed by DANIEL V. MARINO., (rf,) (Additional attachment (s) added on 11/21/2011: # <u>1</u> EXHIBITS) (rf,). (Entered: 11/18/2011)
11/17/2011		19 Summons Issued as to BOBBY ROSS AVILA, JR, ISSIAH AVILA, JR, DANTE E BARTON, BYSTROM ENTERTAINMENT, DEFENDERS OF MUSIC, DESTRO MUSIC PRODUCTIONS, INC., EMI MUSIC PUBLISHING, INC., FLYTE TYME TUNES, WILLIAM C GUICE, JAMES SAMUEL HARRIS, III, IN2N ENTERTAINMENT GROUP, LLC., TERRY STEVEN LEWIS, MARK PITTS, SONY MUSIC HOLDINGS, INC., SUBLIME BASEMENT TUNEZ, UR-IV MUSIC, INC., USHER(A/K/A USHER TERRY RAYMOND IV), USHER(ETAL), TOMMY VAN DELL, WARNER-TAMERLINE PUBLISHING CORP.. forwarded to Plaintiffs Counsel on 11/18/11 (rf,) (Entered: 11/18/2011)

PACER Service Center			
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